

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No.: 301359/2014

JASON CALDWELL,

Plaintiff(s),

X
VERIFIED COMPLAINT

-against-

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, P.O. PATRICIA McVEIGH, SHIELD
NO.: 13877, P.O. RAMON GARCIA, SHIELD NO.: 13813,
P.O. ELIZABETH FORTUNATO, SHIELD NO.: 3873
AND P.O. DOUGLAS YAGUAL, SHIELD NO.: 7327,

Defendant(s),

X

JASON CALDWELL, by his attorneys, GETZ & BRAVERMAN, P.C., respectfully
alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION

- (1) At all times mentioned, Plaintiff **JASON CALDWELL** was a resident of Bronx County, City and State of New York.
- (2) At all times mentioned, Defendant **CITY OF NEW YORK**, was and is a municipal corporation duly organized and existing by virtue of the Laws of the State of New York.
- (3) Upon information and belief, at all times mentioned, Defendants **NEW YORK CITY POLICE DEPARTMENT, P.O. PATRICIA McVEIGH, SHIELD NO.: 13877, P.O. RAMON GARCIA, SHIELD NO.: 13813, P.O. ELIZABETH FORTUNATO, SHIELD NO.: 3873 AND P.O. DOUGLAS YAGUAL, SHIELD NO.: 7327** were and are police officers of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, **THE CITY OF NEW YORK**.

(4) On or about April 25, 2015, at approximately 2:01 a.m. at Northeast corner of New England Thruway and Hutchinson River, County of Bronx, State of New York the Defendants jointly and severally in their capacity as police officers, wrongfully tased, beat up, touched, grabbed, handcuffed and seized the Plaintiff **JASON CALDWELL**, in an excessive manner about his person, causing him physical pain. At no time did the Defendants have legal cause to tase, grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A SECOND CAUSE OF ACTION

(5) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "7" with full force and effect as though set forth at length herein.

(6) On or about April 25, 2015, at approximately 2:01 a.m. at Northeast corner of New England Thruway and Hutchinson River, County of Bronx, State of New York the Defendants jointly and severally did place Plaintiff **JASON CALDWELL**, in imminent fear of physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, tase, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact. At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A THIRD CAUSE OF ACTION

(7) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "9" with full force and effect as though set forth at length herein.

(8) On or about April 25, 2015, at approximately 2:01 a.m. at Northeast corner of New England Thruway and Hutchinson River, County of Bronx, State of New York the

Defendants THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, P.O. PATRICIA McVEIGH, SHIELD NO.: 13877, P.O. RAMON GARCIA, SHIELD NO.: 13813, P.O. ELIZABETH FORTUNATO, SHIELD NO.: 3873 AND P.O. DOUGLAS YAGUAL, SHIELD NO.: 7327, jointly and severally without any warrant, order or other legal process and without any legal right, wrongfully and unlawfully arrested the Plaintiff, tased him, restrained him and his liberty and then took him into custody to a police station in the County of the Bronx and there charged him with the crimes on Docket No.: 2015BX019646. The Plaintiff was thereafter held in custody over the course of approximately three (3) days until he was released on bail. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FOURTH CAUSE OF ACTION

(9) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "11" with full force and effect as though set forth at length herein.

(10) On or about April 25, 2015, at approximately 2:01 a.m. at Northeast corner of New England Thruway and Hutchinson River, County of Bronx, State of New York the Defendants, jointly and severally without any valid warrant, order or other legal process and without any legal right, wrongfully and unlawfully imprisoned the Plaintiff, tased him, restrained him and his liberty and then took him into custody and causing him to be incarcerated as a detainee in the City of New York's Correctional Facility. The Plaintiff was thereafter held in custody over the course of approximately three (3) days before being released on bail. The

Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FIFTH CAUSE OF ACTION

(11) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "12" with full force and effect as though set forth at length herein.

(12) Upon information and belief, on or about April 25, 2015, Defendants **THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, P.O. PATRICIA McVEIGH, SHIELD NO.: 13877, P.O. RAMON GARCIA, SHIELD NO.: 13813, P.O. ELIZABETH FORTUNATO, SHIELD NO.: 3873 AND P.O. DOUGLAS YAGUAL, SHIELD NO.: 7327**, deliberately and maliciously prosecuted Plaintiff **JASON CALDWELL**, an innocent male without any probable cause whatsoever, by filing or causing a criminal court complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of falsely accusing the plaintiff of violations of the criminal laws of the State of New York.

(13) The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the Plaintiff and due to the absence of probable cause malice can be inferred.

(14) The commencement of these criminal proceedings under Docket No. 2015BX019646 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.

(15) As a result of the malicious prosecution, Plaintiff was deprived of him liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple court appearances to defend his liberty against these unjust charges.

AS AND FOR A SIXTH CAUSE OF ACTION

(This Cause of Action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

(16) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "18" with full force and effect as though set forth at length herein.

(17) Defendants **P.O. PATRICIA McVEIGH, SHIELD NO.: 13877, P.O. RAMON GARCIA, SHIELD NO.: 13813, P.O. ELIZABETH FORTUNATO, SHIELD NO.: 3873 AND P.O. DOUGLAS YAGUAL, SHIELD NO.: 7327**, was at all times relevant, duly appointed and acting officers of the City of New York Police Department.

(18) At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

(19) Plaintiff **JASON CALDWELL** is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

(20) The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.

(21) On or about April 25, 2015, the Defendants, armed police, while effectuating the seizure of Plaintiff **JASON CALDWELL**, did search, seize, tased, assaulted and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, tased, beaten, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.

(22) The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

- a. Freedom from assault to his person;
- b. Freedom from battery to his person;
- c. Freedom from illegal search and seizure;
- d. Freedom from false arrest;
- e. Freedom from malicious prosecution;
- f. Freedom from the use of excessive force during the arrest process;
- g. Freedom from unlawful imprisonment;

(23) The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

(24) The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A SEVENTH CAUSE OF ACTION

(This Cause of Action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

(25) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "24" with full force and effect as though set forth at length herein.

(25) Defendants P.O. PATRICIA McVEIGH, SHIELD NO.: 13877 was at all times relevant, duly appointed and acting officers of the City of New York Police Department.

(26) At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

(27) Plaintiff **JASON CALDWELL** is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

(28) The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.

(29) On or about April 25, 2015, the Defendants, armed police, while effectuating the seizure of Plaintiff **JASON CALDWELL**, did search, seize, tased, assaulted and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, tased, beaten, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.

(30) The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

- a. Freedom from assault to his person;
- b. Freedom from battery to his person;
- c. Freedom from illegal search and seizure;
- d. Freedom from false arrest;
- e. Freedom from malicious prosecution;
- f. Freedom from the use of excessive force during the arrest process;
- g. Freedom from unlawful imprisonment;

(31) The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

(32) The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR AN EIGHTH CAUSE OF ACTION

(This Cause of Action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

(33) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "32" with full force and effect as though set forth at length herein.

(34) Defendants **P.O. RAMON GARCIA, SHIELD NO.: 13813** was at all times relevant, duly appointed and acting officers of the City of New York Police Department.

(35) At all times mentioned herein, said police officers were acting under color of law,

to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

(36) Plaintiff **JASON CALDWELL** is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

(37) The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.

(38) On or about April 25, 2015, the Defendants, armed police, while effectuating the seizure of Plaintiff **JASON CALDWELL**, did search, seize, tased, assaulted and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, tased, beaten, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.

(39) The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

- a. Freedom from assault to his person;
- b. Freedom from battery to his person;
- c. Freedom from illegal search and seizure;
- d. Freedom from false arrest;
- e. Freedom from malicious prosecution;
- f. Freedom from the use of excessive force during the arrest process;
- g. Freedom from unlawful imprisonment;

(40) The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

(41) The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A NINTH CAUSE OF ACTION

(This Cause of Action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

(42) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "41" with full force and effect as though set forth at length herein.

(43) Defendants **P.O. ELIZABETH FORTUNATO, SHIELD NO.: 3873** was at all times relevant, duly appointed and acting officers of the City of New York Police Department.

(44) At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

(45) Plaintiff **JASON CALDWELL** is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

(46) The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.

(47) On or about April 25, 2015, the Defendants, armed police, while effectuating the seizure of Plaintiff **JASON CALDWELL**, did search, seize, tased, assaulted and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, tased, beaten, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.

(48) The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

- a. Freedom from assault to his person;
- b. Freedom from battery to his person;
- c. Freedom from illegal search and seizure;
- d. Freedom from false arrest;
- e. Freedom from malicious prosecution;
- f. Freedom from the use of excessive force during the arrest process;
- g. Freedom from unlawful imprisonment;

(49) The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

(50) The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A TENTH CAUSE OF ACTION

(This Cause of Action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

(51) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "50" with full force and effect as though set forth at length herein.

(52) Defendants **P.O. DOUGLAS YAGUAL, SHIELD NO.: 7327** was at all times relevant, duly appointed and acting officers of the City of New York Police Department.

(53) At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

(54) Plaintiff **JASON CALDWELL** is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

(55) The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.

(56) On or about April 25, 2015, the Defendants, armed police, while effectuating the seizure of Plaintiff **JASON CALDWELL**, did search, seize, tased, assaulted and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, tased, beaten, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.

(57) The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

- a. Freedom from assault to his person;
- b. Freedom from battery to his person;
- c. Freedom from illegal search and seizure;
- d. Freedom from false arrest;
- e. Freedom from malicious prosecution;
- f. Freedom from the use of excessive force during the arrest process;
- g. Freedom from unlawful imprisonment;

(58) The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

(59) The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR AN ELEVENTH CAUSE OF ACTION

(60) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "59" with full force and effect as though set forth at length herein. (This Cause of Action applies to the City of New York and the officer sued in their official capacity should be characterized as a "Monell" claim.)

(61) Defendant THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, P.O. PATRICIA McVEIGH, SHIELD NO.: 13877, P.O. RAMON GARCIA, SHIELD NO.: 13813, P.O. ELIZABETH FORTUNATO, SHIELD NO.: 3873

AND P.O. DOUGLAS YAGUAL, SHIELD NO.: 7327, has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.

(62) **THE CITY OF NEW YORK** was negligent by failing to implement a policy with its Police Department and instruct police officers who, absent the consent of the Plaintiff (or similarly situated individuals) or without the possession of a court authorized arrest and/or search warrant, said police officers of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should be used where a criminal defendant is not resisting arrest.

(63) **THE CITY OF NEW YORK** is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:

1. Probable cause must be present before an individual such as the Plaintiff herein can be arrested.
2. Excessive force cannot be used against an individual who does not physically resist arrest.
3. An individual who sustains physical injury at the hands of the police during the arrest process should receive prompt medical attention.

4. An individual such as the Plaintiff herein cannot be subjected to a strip search with cavity inspection unless the police possess legal cause and/or have a reasonable suspicion and/or probable cause that the plaintiff has secreted contraband in or on his person.

(64) The foregoing acts, omissions and systemic failures are customs and policies of the **CITY OF NEW YORK** which caused the police officers to falsely arrest, maliciously prosecute, tase, beat up, seize illegally and search the Plaintiff commit an assault/battery to his person and denied his prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

(65) Defendant **CITY OF NEW YORK** was negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the Police Officers Defendants, knew or should have known of the bad disposition of said Defendants or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact that these officers were not suitable to be hired and employed by the **CITY OF NEW YORK** and that due to their lack of training, these officers should have had adequate supervision so that they would not arrest innocent individuals nor use excessive force during the arrest process.

(66) The City of New York's (herein as "City") failure to train its police officers to distinguish between individuals who are lessee's and/or reside at the apartment of sufficient length of time as evidenced by utility bills in their name, letters/mail addressed to them at the residence and/or magazine subscriptions, etc as opposed to individuals who are mere guests and/or visitors who do not have the right to exercise dominion and control over the residence as evidenced by their not having any furniture in the apartment, their name on the lease, their name on a utility bill or mail addressed to them are all factors that the City in the past has ignored. As

these same fact patterns have come up over the past twenty-five (25) years with alarming frequency as evidenced by past notice of claims that the firm has filed with the City of New York in the past on multiple occasions sufficient to demonstrate a pattern by the City's police officers of continued violations of individuals similarly situated to the Plaintiff. The pattern demonstrates that either a defacto policy/custom exists to allow this behavior by failing to discipline its officers or this is a custom of its police officers who have no and/or sufficient training and/or no proper supervision and/or disciplinary penalties assessed against them for continued acting in an unconstitutional manner. The Plaintiff's counsel has approximately thirty-two (32) Notice of Claims spanning approximately 10 years to demonstrate a pattern practice and custom of deliberate indifference by the City. In the past, this represents at least a de facto policy by the City of New York in countenancing unconstitutional behavior, by not disciplining and/or not properly supervising/training its individual police officers in the proper procedure of arresting or not arresting individuals who may be merely present at an apartment.

WHEREFORE, Plaintiff demands judgement against the Defendants, together with the costs and disbursements of this action in the amount of damages greater than the jurisdictional limit of any lower court where otherwise have jurisdiction, together with attorneys' fees and costs for bringing this case and punitive damages.

Dated: Bronx, New York
April 6, 2016

Yours etc,


MICHAEL BRAVERMAN, ESQ.
CITZ & BRAVERMAN, P.C.
Attorney for Plaintiff(s)
JASON CALDWELL
172 East 161st Street
Bronx, New York 10451
(718) 993-3000
Our File No.: 8918

PLAINTIFF'S VERIFICATION

STATE OF NEW YORK
COUNTY OF BRONX

ss:

Jason Caldwell, being duly sworn, says:

I am a Plaintiff in the action herein: I have read the annexed Summons & Verified Complaint and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my personal files.

DATED: Bronx, New York
4/16/2016

Jason Caldwell

Sworn to before me this
16th day of April, 2016.

Notary Public

Notary Public
State of New York
County of Bronx
April 16, 2016